

EXHIBIT

"2"

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID F. KELLY BEY, Plaintiff	:	No. 3:13-CV-1942
	:	(Judge: A. Richard Caputo)
	:	
v.	:	(M.J.: Susan E. Schwab)
	:	
DANIEL S. KEEN, MICHELLE WELLER, JESSICA STERNER-LENSBOWER, AND ISAAC BURKHOLDER, Defendants	: : : : :	JURY TRIAL DEMANDED (Electronically Filed)

AFFIDAVIT OF FRANKLIN COUNTY JAIL DEPUTY WARDEN
MICHELLE WELLER

Michelle Weller, being duly sworn according to law, hereby deposes and states as follows:

1. I am currently the Deputy Warden of Inmate Services at the Franklin County Jail (FCJ). I have held this position since 2010.
2. My duties include overseeing services provided to the inmate population. These services include treatment, religious and medical services.
3. In order to properly provide for the religious needs of inmates of all persuasions at the Franklin County Jail, I have reviewed the following materials: United States Department of Justice Technical Reference on Inmate Religious Beliefs and Practices [hereinafter "DOJ Technical Reference"], relevant portions of

which appear as Exhibit "5" in the Appendix of Exhibits, as well as other training materials on religious needs and practices.

4. I have also had numerous discussions with clerics and representatives of organizations from a variety of faiths, including but not limited to Catholic, Christian, Jewish and Muslim.

5. Specifically as to the needs of Muslim inmates, I have reviewed the materials set forth in Paragraph 3, *supra*, as well as the State of Indiana Department of Corrections Handbook of Religious Beliefs and Practices. I have additionally sought the repeated counsel of the Islamic Society of Western Maryland and Hadee Mosque of Harrisburg, Pennsylvania.

6. Based upon the review and consultation enumerated in Paragraphs three (3) through (5), above, I have knowledge of the requirements for provision of a *halāl* Muslim religious diet.

7. It is my understanding that pursuant to Islamic law, food is either *halāl*, "lawful," or *harām*, "forbidden." Foods are *halāl* unless they are explicitly forbidden. *Harām* foods include: pork, pork-by-products, and pork-derivatives; all types of blood; meat of animals which have died naturally, were killed by strangulation, a violent blow, or a headlong fall, partially eaten by scavengers, or sacrificed as an offering to idols; carnivorous animals, reptiles and insects; and wine, ethyl alcohol and spirits.

8. It is my understanding that pursuant to the teachings of the Moorish Science Temple of America, Moorish-Americans are not to consume pork or anything else that may be harmful to them, and do not consume alcohol or use tobacco.

9. The Franklin County Jail utilizes Trinity Services Group, Inc., to provide food services for inmates.

10. The FCJ provides general population inmates with a dietary plan which operates on a four (4) week cycle [hereinafter "General Population Meal Plan"], comprised of both meat and vegetarian items. The General Population Meal Plan has been approved by a Licensed Dietician-Nutritionist, who has affirmed that the meals provide a nutritionally adequate diet averaging 3000 calories per day, satisfying the Recommended Dietary Allowances for major nutrients required for adult males.

11. Trinity Services Group has assured me that the General Population Meal Plan accords with the dietary restrictions of a Muslim religious diet. (See, e.g., Exhibit "A" hereto, Emails from Michelle Weller to Trinity Services Group, Inc.)

12. Based upon my own review of the United States Department of Justice Technical Reference on Inmate Religious Beliefs and Practices, the General Population Meal Plan satisfies the requirements of a Muslim religious diet.

13. In such case as a Muslim inmate believes that the General Population Meal Plan does not accord with their religious needs, they are permitted to request the Vegetarian Meal Plan, and are granted same on request.

14. The Vegetarian Meal Plan is complaint with halāl dietary restrictions.

15. Pursuant to FCJ policy, special religious diets may be requested in writing to myself, the Deputy Warden of Inmate Services, or via the Chaplain, who forwards such requests to my attention.

16. Upon receipt of a dietary request, I contact members of the particular religious community of the requesting inmate, to validate whether the request comports with the tenants of the inmate's particular faith group.

17. I often ask inmates to provide me with a detailed statement of their reasoning for making a request. If an inmate is dissatisfied with the manner the FCJ is accommodating their dietary religious practices, I request that they provide me with the reasons for their dissatisfaction, and explain why they believe the jail is failing to properly provide for their religious dietary needs, so that I can discuss their specific request and specific concerns with the person(s) from their religious community with whom I consult regarding it.

18. If, upon consultation with religious authorities of a particular faith-group, it is determined an inmate's request is valid, it will be approved and forwarded to the Food Service Manager.

19. Pending the approval of any dietary request, the requesting inmate is told they can be placed on the Vegetarian or Vegan Meal Plan to provide for their needs while their request is being validated. Any and all requests for the Vegetarian or Vegan Meal Plans are immediately granted, regardless of the reasoning.

20. The sole accommodation made to any inmate requesting any religious diet pending validation of their request is placement on the Vegetarian or Vegan Meal Plan.

21. Kosher religious diets are provided to Jewish inmates, as the requirements for kosher food include that the foodstuff cannot be prepared or consumed using a utensil or in an oven which has ever been used for or come into contact with non-kosher foods. It is my understanding that kosher food can become non-kosher by reason of simply touching a dish or utensil which has contacted non-kosher food. It is also my understanding that rabbinical inspections are occasionally required for kosher facilities, rabbinical blessing is required to create a kosher kitchen and/or cooking implement, and that kosher facilities require the separation of any meat-based product from any dairy-based product.

22. The cost of creating and maintaining a kosher kitchen inside the FCJ is prohibitive, and there is no other means of accommodating requests for a kosher diet from within the facility absent establishing a kosher kitchen.

23. The diets given to Jewish inmates are ordered from Benjamin Foods, and come pre-packaged, with all utensils necessary, in double-layered packaging as is required pursuant to Jewish law.

24. In accordance with the recommendation of the US Department of Justice, the Franklin County jail purchases kosher meals for Jewish inmates, given the prohibitive cost of creating and maintaining a kosher kitchen inside the institution, as well as staffing and security concerns. Indeed, absent the purchase of pre-packaged meals, the FCJ could not realistically provide for Jewish religious dietary needs.

25. After Kelly-Bey submitted an Inmate Request Slip on August 31, 2012, with regard to provision of a halāl diet for Muslim inmates, I responded by requesting he provide information as to why he felt the General Population Meal Plan did not satisfy his religious needs given the lack of pork products. Kelly-Bey did not provide me any further information.

26. Following submission of the Inmate Grievance Form regarding halāl meals, I requested further information from Kelly-Bey in order to properly evaluate his request, but was not provided any reasons for his belief the General Plan did not provide a Muslim religious diet.

27. Following submission of the requests and grievances, I contacted kitchen staff and Trinity Services Group to ensure the General Plan was compliant with Islamic dietary restrictions, and was told the plan was compliant.

28. Although Kelly-Bey was told he could request the Vegetarian/Vegan Meal Plan, he did not do so.

29. Following submission of the requests and grievances, I contacted members of the Islamic Community in Hagerstown, Maryland, to inquire about religious meals.

30. The FCJ employs the services of a single full-time religious Chaplain through United Churches of the Chambersburg Area, at a minimal cost of fifteen-thousand dollars per year. The remaining religious services provided are via volunteers, who donate their time to the institution.

31. There is no full-time Rabbi to service Jewish inmates, Apostle to service Mormon inmates, Preacher to service Protestant inmates, Monk, Lama, or Scholar to service Buddhist inmates of various sects, Brahmin to service Hindu inmates, or Guru to service Sikh inmates. There is no full-time Shia Muslim cleric. There is also no full-time cleric to service Eastern Rite Catholic inmates, Asatru inmates, Native American inmates of various tribes, Rastafarian inmates, Roman Catholic inmates, Eastern Orthodox inmates, or Wiccan inmates.

32. I have reviewed the FCJ records regarding religious affiliation of inmates currently housed within the institution. It is my understanding from review of such records that there are currently twelve (12) Muslim inmates and one specifically (1) Sunni inmate out of the total 416 inmates currently incarcerated in the jail. There is also one (1) Buddhist inmate, one (1) Satanist inmate, one (1) German Baptist inmate, and one (1) Wicca inmate. The majority of inmates identify themselves as "Christian," without specification. There are also Catholic inmates, Protestant inmates, Greek Orthodox inmates, Eastern Orthodox inmates, Jewish inmates, Mennonite inmates, Pentecostal inmates, Baptist inmates, Lutheran inmates, Mormon inmates, and Methodist inmates. Other religious denominations have been represented in the inmate population in the past.

33. In 2004, the FCJ had an arrangement with an Imam referred to the institution by the Islamic Society of Western Maryland who came to the institution as an unpaid volunteer to conduct Jumu'ah services once per month and lead prayer sessions during Ramadan.

34. The visits ceased at the end of the Ramadan holiday in 2005, after the Imam travelled to the FCJ and found no inmates wished to participate in services. The Imam does not wish to return to the FCJ.

35. The first request for an Imam to lead Muslim religious services of which I am aware since the Maryland Imam ceased his visits to the FCJ was in January 2006.

36. Since that time, FCJ officials have made inquiries with a variety of Islamic societies and Mosques regarding a volunteer Imam, but have been unable to locate one. Since the request for a Muslim cleric was first brought to my attention, have made inquiry with the following organizations: Islamic Society of Western Maryland, Islamic Center Masjid Al, Islamic Society of Greater Harrisburg, Harrisburg Masjid, and the American Muslim Mission.

37. I have made telephone contact with the Islamic Society of Western Maryland in August of 2011, and in July of 2012, both to make inquiry regarding a volunteer Imam, as well as to discuss Ramadan services and the needs of Muslim inmates during this important holiday.

38. I have been repeatedly told that finding a volunteer Imam to travel to the FCJ will be difficult given its location, the representatives of the various Islamic societies that I have contacted further stating that such clerics will wish to be compensated for their time and travel expenses.

39. The FCJ simply does not have the financial resources to compensate the clerics of any religious organization or sect to provide religious services to inmates. Because of the limited budget, if the FCJ were to compensate the clerics

of various faiths, sects, and sub-sects thereof for providing religious services, it would be unable to provide other vital services to inmates.

40. I believe that if we were to compensate a Muslim cleric to travel to the Franklin County Jail, we would be required under the Equal Protection Clause to compensate the clerics of other religious persuasions, sects and sub-sects. Given the jail's operational budget, such is simply impossible without drastically reducing the number of correctional officers employed and the rehabilitative services provided by the institution. Such would threaten institutional order and the safety and security of the remaining staff and inmate population.

41. At present, Muslim Inmates are accorded a space for their weekly use in conducting Taleem Studies, inmate-led Jumu'ah Services, and other Islamic religious functions, and materials necessary to do so, and are supervised during worship by the Chaplain, Isaac Burkholder.

42. In my experience, Mr. Burkholder has a good knowledge of Islamic tradition, and an immense respect for the religious beliefs not only of Muslims, but of all people of faith, regardless of their denomination.

43. The Chaplain supervises group Islamic worship and study, and group worship of inmates of other religious persuasions, for the purpose of ensuring the safety of inmates and staff, the security of the institution, and that the time and

space allotted is indeed being used for religious worship. He does not interfere with the inmates' religious practice in any manner.

44. I will continue to make inquiries of various Islamic religious organizations and mosques regarding a volunteer Imam, and hope that one can be found.

45. I have reviewed Franklin County Jail Records, and it is my understanding from that review that David Kelly-Bey was incarcerated at the FCJ on April 27, 2011, and was released briefly March 20, 2013, but was incarcerated on that date until April 8, 2013. Kelly-Bey was incarcerated on May 23, 2013, until his transfer from the FCJ on July 11, 2013 to SCI-Camp Hill, after he was sentenced to time in a State Correctional Facility by the Franklin County Court of Common Pleas.

The foregoing is based upon my personal knowledge and I am competent to and would testify to same if called as a witness at the trial of this matter.

Date: 11/4/13

Michelle Weller
Michelle Weller

Sworn to and subscribed before
me this 4th day of
November, 2013.

Melyssa H. Flud
Notary

